



Section 8 : GENERAL TERMS AND CONDITIONS

859.COST REIMBURSEMENT GENERAL TERMS AND CONDITIONS (9/1/98)

1. FORMATION OF THE CONTRACT

This order is Buyer's offer to Seller, and acceptance by Seller is limited to the terms of this offer. Buyer objects to any additional terms stated in Seller's acceptance. Acceptance may be by prompt written acknowledgment or by beginning performance. Seller's acceptance of this order creates a binding contract between Seller and Buyer ("this contract"), which shall be governed by the terms and conditions of this order.

2. MODIFICATIONS

None of the terms and conditions of this contract may be contradicted, modified, supplemented, explained, waived, or rescinded except as provided in this contract or in a written agreement signed by both parties. Only Buyer's authorized purchasing representative may sign on behalf of Buyer.

3. INSPECTIONS

(A) Seller will provide and maintain an inspection system acceptable to Buyer and, where applicable, the Government covering goods and services under this contract and will tender only goods that have been inspected and found to conform to this contract's requirements. Seller will keep records evidencing inspections and their results and will make these records available to Buyer and the Government, where applicable, during contract performance and for three years after final payment.

(B) All goods to be delivered and services to be performed hereunder will be subject to inspection and test, to the extent practicable at all times and places, including the period and place of manufacture or performance, and in any event, before acceptance by Buyer, and also by the Government if this is a subcontract that is placed under a Government contract or subcontract. Buyer and the Government will perform inspections and tests in a manner that will not unduly delay the work.

(C) If Buyer or the Government performs an inspection or test on the premises of Seller or its subcontractor, Seller will furnish, and require its subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

4. QUALITY CONTROL

Seller will provide and maintain a quality control system acceptable to Buyer or the Government, where applicable, for the goods and services purchased under this contract, and Seller will permit Buyer or the Government, where applicable, to review procedures, practices, processes, and related documents to determine such acceptability.

5. DELIVERY

Seller will strictly adhere to the delivery and completion schedules specified in this contract. If, at any time, Seller believes

it may be unable to comply with the delivery or completion schedules, Seller will immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it, and will provide Buyer with a written recovery schedule. Seller will continue to notify Buyer of any material change in the situation. If Seller fails to deliver goods within the delivery schedule, Buyer may require Seller to ship goods, at Seller's expense, by air freight or expedited routing.

6. ACCEPTANCE, REJECTION, AND CORRECTION OF DEFICIENCIES

(A) Buyer will accept or give notice of rejection of goods delivered and services performed within 90 days of receipt of goods or completion of services.

(B) Goods

(i) At any time during contract performance, but no later than six months after acceptance of the goods to be delivered under this contract, Buyer may, at its option, require Seller to replace or correct any nonconforming goods. Except as otherwise provided in paragraph (B)(iii), the cost of replacement or correction will be included in allowable cost, but no fee will be paid. Seller will not tender for acceptance corrected or rejected goods without disclosing the former rejection or requirement for correction and, when required, will disclose the corrective action taken.

(ii) If Seller fails to proceed with reasonable promptness to perform required replacement or correction, Buyer may (a) by contract or otherwise, perform the replacement or correction and charge to Seller any increased cost or make an equitable reduction in any fixed fee paid or payable under this contract; (b) require delivery of undelivered goods at an equitable reduction in any fixed fee paid or payable under this contract; or (c) cancel this contract for default.

(iii) Notwithstanding paragraphs (B)(i) and (B)(ii), Buyer may at any time require Seller to correct or replace, without cost to Buyer, nonconforming goods if the nonconformities are due to fraud or lack of good faith on the part of Seller's managerial personnel or the conduct of one or more of Seller's employees selected or retained by Seller after any of Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(C) Services

(i) If services do not conform with contract requirements, Buyer may require Seller to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, Buyer may require Seller to take necessary action to ensure that future performance conforms to contract requirements and reduce any fee payable under this contract to reflect the reduced value of the services performed.

(ii) If Seller fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, Buyer may, by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or cancel this contract for default.

(D) Year 2000. Seller warrants that any hardware, software, and firmware product delivered under this contract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. The duration of this warranty and the remedies available to Buyer for breach of this warranty shall be as defined in, and subject to, the other warranties contained in this contract, provided that notwithstanding any provision to the contrary in such warranties, the remedies available to Buyer under this warranty shall include repair or replacement of any non-compliant product discovered and made known to Seller in writing. Nothing in this warranty shall be construed to limit any rights or remedies Buyer may otherwise have under this contract with respect to defects other than Year 2000

performance.

(E) This Article applies to corrected or replacement goods or services in the same manner as to goods or services originally delivered or performed.

7. CHANGES

(A) Buyer may, at any time, by written order signed by its authorized purchasing representative, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; (iv) description of services to be performed; (v) time of performance of services (i.e., hours of the day, days of the week, etc.); (vi) place of performance of services; or (vii) delivery schedule.

(B) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, Buyer will make an equitable adjustment in the (i) estimated cost, delivery, or completion schedule, or both; (ii) amount of any fixed fee; and (iii) other affected terms, and the parties will modify this contract in writing.

(C) Unless otherwise agreed in writing, Seller must assert its right to an adjustment under this Article within 30 days from the date of receipt of the written change order.

(D) Notwithstanding any dispute under this Article, Seller will proceed with performance of this contract as changed.

(E) Notwithstanding the terms of this Article, the estimated cost and, if this contract is incrementally funded, the funds allotted for the performance of this contract will not be increased or considered to be increased except by specific written notification by an authorized purchasing representative of Buyer indicating the new estimated cost and, if this contract is incrementally funded, the new amount allotted to this contract. Until this notification is given, Seller may decline to incur costs in excess of estimated cost or allotted funds.

8. LIMITATIONS OF COST

(A) The parties estimate that performance of this contract, exclusive of any fee, will not cost Buyer more than the estimated cost specified in this contract. Seller will use its best efforts to perform its obligations under this contract within the estimated cost.

(B) If Seller has reason to believe that, within the next 60 days, incurred costs will exceed 75 percent of the estimated cost, Seller will notify Buyer in writing.

(C) If Seller has reason to believe that the total cost to perform this contract, exclusive of any fee, will be either greater or substantially less than the estimated cost, Seller will notify Buyer in writing. In its notification, Seller will provide Buyer with a revised projection of the total cost of performing this contract.

(D) Buyer will not reimburse Seller for costs incurred in excess of estimated costs, and Seller may discontinue performance of this contract or otherwise decline to incur costs in excess of the estimated cost until Buyer notifies Seller in writing that the estimated cost has been increased and revises this contract to reflect a revised estimated total cost of performing this contract.

(E) If the estimated cost is increased, any costs Seller incurs before the increase in excess of the previously estimated cost

will be allowable to the same extent as if incurred afterward unless Buyer directs in its notice that the increase is solely to cover termination or other specified expenses.

(F) Change orders will not be considered an authorization to exceed the estimated cost to Buyer unless they contain a statement increasing the estimated cost.

(G) When it is indicated in the schedule of the contract that the effort hereunder is to be incrementally funded, then this Article is modified to read: Limitation of Funds, Federal Acquisition Regulation (FAR) clause 52.232-22, is incorporated herein by reference. "Contractor" shall mean Seller, and "Contracting Officer" and "Government" shall mean Buyer.

9. INVOICE AND PAYMENT

(A) For each shipment of goods or completed item of services, Seller will submit an original invoice marked "Original" and one copy marked "Copy" to Buyer's appropriate Accounts Payable Department. Taxes, if any, must be separately itemized. Order number and line item number must appear on all invoices, shipping documents, quality certificates, and packing sheets.

(B) Determination of payment due date, whether under net or discount terms, will be based on the latest of: (i) the date goods are received or services performed; (ii) the date provided in this contract for receipt of goods or completion of services; or (iii) the date an accurate invoice is received in the Accounts Payable Department specified elsewhere in this contract.

(C) Payment of fee will be made in monthly installments based upon the percentage of completion of this contract, as determined by Buyer. Payment will be deemed to have been made when deposited in the mail.

(D) Except as provided in this Article, payment will be made in accordance with the following clauses of the Federal Acquisition Regulation in effect on the date of this contract, which are incorporated by reference. In each of the following clauses, "Contractor" shall mean Seller, "Contracting Officer" and "Government" shall mean Buyer, and "Disputes Clause" shall mean the Disputes Article of this contract.

(i) FAR 52.216-7 Allowable Cost and Payment

(ii) FAR 52.216-8 Fixed Fee, if this is a cost-plus-fixed-fee contract.

(iii) FAR 52.216-10 Incentive Fee, if this is a cost-plus-incentive-fee contract.

10. LIMITATION ON PAYMENTS

(A) Seller will include in each price redetermination or incentive price revision subcontract the substance of the following clauses, whichever is applicable, in effect on the date of this contract. In each of the following clauses, "Contractor" shall mean Seller.

(i) FAR 52.216-5 Price Redetermination - Prospective, paragraphs (h) and (i), modified as required by subparagraph (i)(1);

(ii) FAR 52.216-6 Price Redetermination - Retroactive, paragraphs (g) and (h), modified as required by subparagraph (h)(1);

(iii) FAR 52.216-16 Incentive Price Revision - Firm Target, paragraphs (g) and (h), modified as required by subparagraph (h)(1);

(iv) FAR 52.216-17 Incentive Price Revision - Successive Targets, paragraphs (i) and (j), modified as required by subparagraph (j)(1).

(B) Seller will include the substance of this Article in each cost-reimbursement subcontract, modified to reflect the subcontractor's position as seller.

11. AUDIT

(A) Until three years after final payment, Seller will maintain, and Buyer will have the right to examine and audit, books, records, documents, and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract.

(B) Before making each payment under this contract, Buyer may require Seller to submit vouchers, receipts, payroll information, and labor and material releases.

12. TITLE

Buyer will have title to all work under this contract, completed or in the course of manufacture or assembly in Seller's plant, and all Seller-purchased material, parts, assemblies, subassemblies, tools, machinery, equipment, and supplies for which Seller will be entitled to reimbursement; provided, however, that if this contract is issued under a Government contract or subcontract, title to such work will be in the Government.

13. TERMINATION

(A) Buyer may terminate performance of work under this contract in whole or, from time to time, in part in accordance with FAR 52.249-6 Termination (Cost Reimbursement), in effect on the date of this contract, which clause is incorporated by reference, except for paragraphs (e) and (j). "Contractor" shall mean Seller and "Government" and "Contracting Officer" shall mean Buyer. The period for submitting Seller's termination settlement proposal is reduced to six months, and Seller will not be obligated to pay interest in excess of the maximum rate allowed by law.

(B) Buyer may cancel this contract in whole or in part without liability in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of its creditors.

14. BUYER'S PROPERTY

Seller will clearly mark, maintain an inventory of, and keep segregated or identifiable all Buyer property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction, or damage to such property while in Seller's possession, custody, or control, and will not use such property other than in performance of this contract without Buyer's written consent. Seller will notify Buyer if Buyer's property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination, or cancellation of this contract, Seller will deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Article limits Seller's use in direct dealings with the Government of property in which the Government has a vested interest.

15. GOVERNMENT PROPERTY

Seller will comply with FAR Clause 52.245-2 Government Property and Subpart 45.5 of the FAR "Management of Government Property in the Possession of Contractors" in effect on the date of this contract and which are incorporated by

reference. "Contractor" shall mean Seller. With respect to Government property transferred to Seller by Buyer directly or by means of a foreign receiver, tool completion report, special test equipment completion report or other similar documentation, Seller assumes all risk of loss of or damage to said Government property while in Seller's custody or control and will immediately notify Buyer of loss of, destruction of, or damage to such property. Upon termination or completion of this contract, Seller will deliver such property, as directed by Buyer, in good condition subject to ordinary wear and tear and normal manufacturing losses.

16. NONDISCLOSURE

Neither party will, without the prior written consent of the other, reproduce, use, or disclose to any employee or third party any proprietary information or data furnished by the other party, except as required to perform this contract. Any information or data must be clearly marked as proprietary to qualify for nondisclosure. This restriction does not apply to information or data (i) in the public domain through no breach of this contract by the recipient; (ii) otherwise known to the recipient at the time of receipt without restrictions as to use or disclosure; or (iii) acquired by the recipient from a source, other than the disclosing party, that had the right to disclose such information to the recipient.

17. PATENT, TRADEMARK, COPYRIGHT, AND MASK WORK INDEMNITY

Seller agrees to indemnify and hold harmless Buyer against any expense, loss, or liability for any actual or alleged infringement of any patent, trademark, copyright, or mask work arising from or related to the use, sale, manufacture, disposal, display, or reproduction of goods purchased or services performed under this contract. Upon timely receipt of notice of any claim or suit alleging such infringement, Seller agrees to defend Buyer at Seller's expense. Seller is excused from its duties under this Article if such actual or alleged infringement would not have arisen but for Seller's compliance with Buyer's detailed design. If this contract is issued under a Government prime contract or subcontract which contains FAR Clause 52.227-1, the requirement for patent indemnity shall be deemed deleted.

18. BUYER'S USE OF DATA AND INFORMATION

Seller agrees that any data such as drawings, instructions, or information furnished to Buyer in connection with this contract will be free from confidential, proprietary, or restrictive-use markings, other than statutory patent, copyright, U.S. Government security notices, or properly applied restrictive legends permitted by appropriate FAR, Department of Defense FAR Supplement (DFARS), or NASA FAR Supplement clauses incorporated herein. Buyer, its agents, or its assignees may duplicate or use such documents in connection with the manufacture, use, or disposition of the material furnished under this contract and may remove, obliterate, or ignore any such marking as may be on such documents unless such markings are specifically permitted by applicable FAR, DFARS, or NASA FAR Supplement clauses. Except as may be otherwise provided in this contract, all information and data disclosed or furnished to Buyer in connection herewith will be deemed to be disclosed or furnished as part of the consideration for this contract, and Seller agrees not to assert any claims (except claims for patent infringement) by reason of any use, duplication, or disclosure thereof.

19. INTELLECTUAL PROPERTY RIGHTS

Seller will promptly disclose to Buyer in writing any invention, works of authorship, improvement, development, discovery, or mask work conceived or reduced to practice by Seller, either solely or in collaboration with others, using funds paid by Buyer under this contract. Seller will assign all such inventions, works of authorship, improvements, developments, discoveries, or mask works to Buyer. Seller will execute all documents and do whatever is reasonably necessary to ensure that Buyer will obtain full title to such inventions, works of authorship, improvements, developments, discoveries, or mask works and to enable Buyer to secure copyright protection or to file and prosecute applications for patents at Buyer's expense. If this contract is issued under a Government prime contract or subcontract, this Article shall be deemed deleted.

20. SUBCONTRACTING AND ASSIGNMENT

(A) Without Buyer's written consent, Seller will not delegate any duty of performance or subcontract for the design, development, or procurement of any substantial portion of goods or services under this contract. This limitation does not apply to Seller's purchases of standard commercial supplies or raw materials.

(B) Except as hereinafter provided, neither this contract nor any duty, right, or interest therein may be delegated, assigned, or otherwise transferred in any manner by Seller without the prior written consent of Buyer. Any attempted effort to the contrary will be void and Buyer may cancel this contract. Either party may, upon notice to the other, assign this contract to any person, firm, or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for monies due or to become due hereunder to any bank, trust company, or other financial institution, including any governmental lending agency. The assigning party will furnish the other party with two signed copies of any such assignment and such other documents that may be reasonably required by the non-assigning party.

(C) Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

21. STOP WORK

The clause set forth in FAR 52.242-15, Alternate I, Stop-Work Order, in effect on the date of this contract, is incorporated by reference. "Contractor" shall mean Seller and "Government" and "Contracting Officer" shall mean Buyer.

22. DISPUTES

(A) Pending final resolution of any dispute arising under, related to, or involving this contract, Seller agrees to proceed with performance of this contract, including the delivery of goods, in accordance with Buyer's instructions. Seller's failure to proceed in accordance with Buyer's instructions shall be considered a material breach of this contract.

(B) Both parties agree to enter into good faith negotiations to resolve any dispute that arises under, is related to, or involves this contract. If the dispute is not disposed of by agreement, Seller will submit to Buyer's authorized purchasing representative a written demand for Buyer's final decision regarding the disposition of any such dispute unless Buyer, on its own initiative, has already rendered such a final decision. Any final decision will be expressly identified as such, will be in writing, and will be signed by Buyer's authorized purchasing representative. Buyer's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within 90 days following the date of the decision or one year following the accrual of the cause of action, whichever is later.

(C) Any dispute which arises under, is related to, or involves this contract and which relates to a matter that gives Buyer recourse against the Government under the prime contract or applicable law may be resolved, at Buyer's option, in accordance with the Disputes clause of the prime contract as follows: (i) Seller will give Buyer a fully supported written claim concerning any such dispute within one year after the claim accrues, but in no event later than final payment under this contract, or be barred from any remedy for such claim. (ii) Seller will cooperate fully with Buyer in prosecuting any such dispute and will be bound by the outcome unless (a) Buyer does not afford Seller an opportunity to participate in the conduct of the dispute; (b) without Seller's written consent, Buyer settles or takes other action to prejudice Seller's rights in the dispute; or (c) Buyer, having decided to discontinue its own prosecution of the dispute, does not afford Seller an opportunity to continue to prosecute the dispute in Buyer's name. Buyer and Seller will bear their own costs of prosecuting any such dispute. (iii) Any dispute not disposed of in accordance with this paragraph (C) will be decided in accordance with paragraph (B). (iv) Nothing in this contract grants Seller a direct right of action under the Disputes clause of the prime contract.

23. APPLICABLE LAW

This contract will be governed by and construed in accordance with the law of the state in which Buyer's Purchasing Department placing this contract is located, with no consideration to that state's conflict of laws rules, regardless of the places of execution or performance of this contract.

24. WAIVER AND SEVERABILITY

Any action or inaction by Buyer or the failure of Buyer, on any occasion, to enforce any right or provision of this contract will not be construed to be a waiver by Buyer of its rights hereunder and will not prevent Buyer from enforcing such provision or right on any future occasion. A determination that any portion of this contract is unenforceable or invalid will not affect the enforceability or validity of any of the remaining portions of this contract.

25. RIGHTS AND REMEDIES

The rights and remedies of the parties set forth in this contract are cumulative and in addition to any other rights or remedies that they may have at law or in equity. Buyer may offset any damages resulting from a breach of any contract between Buyer and Seller against the price due under any other such contract.

26. COMPLIANCE WITH STATUTES AND REGULATIONS

Seller will comply with all applicable statutes and government rules, regulations, and orders.

27. PRECEDENCE

(A) If the various parts of this contract are inconsistent, the following order of precedence will apply: (i) special terms and conditions; (ii) the terms and conditions in this clause; (iii) specifications; (iv) all other attachments incorporated in this contract by reference.

(B) Buyer's specifications will prevail over any subsidiary documents referenced therein. Seller will not use any specification in lieu of those contained in this contract without the written consent of Buyer's authorized purchasing representative.

28. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

Seller will not make, deny, or confirm any news release, advertisement, or public announcement concerning the subject matter of this contract or any phase of the program hereunder without Buyer's prior written approval.

29. PACKING

(A) All goods are to be packed and packaged for protection during shipment and storage in accordance with best commercial practice or ASTM-D-3951. If Government specification packaging is required, goods are to be packed and packaged in accordance with said specification(s). Highly polished, highly finished, or precision parts are to be properly preserved and packed in containers which will afford physical protection against damage and deterioration. Where appropriate, a shipment consisting of two or more shipping containers will be combined into a unitized load. A unitized load will be limited to 50 inches overall height, on a 42 inch X 48 inch pallet (double deck construction), with no more than a 4 inch overhang on any one side. All unitized loads consisting of multiple containers will be properly stacked and bound, i.e., an efficient stacking pattern, bound by stretch wrap. Any single container over 150 pounds or 60 inches or greater footprint must integrate a four-way entry skid to permit the use of standard material handling equipment. Items packaged with nonconforming packaging are subject to rejection and repackaging at Seller's expense.

(B) Each container will be marked with Buyer's contract number. Each container of a multiple container shipment will be identified to show the number of the container and the total number of containers in the shipment. The packing sheet will be enclosed in or attached to the number one container. All shipments regardless of originator must include packing sheets containing Buyer's contract number, quantity, part number/size, and description of the items shipped. Material for different contracts will be listed on separate packing sheets.

30. SHIPPING INSTRUCTIONS

Seller will ship the goods in accordance with the instructions set forth below and the specific routing terms incorporated in this contract.

(A) Shipping Documentation

(i) All items shipped on the same day will be consolidated on one Bill of Lading or Airbill, unless otherwise authorized by Buyer.

(ii) Material will be described on shipping documents (Bill of Lading or Airbill) in accordance with the applicable classification and/or tariff.

(iii) The total number of shipping containers will be referenced on all shipping documents.

(iv) Buyer's contract number will be referenced on all shipping documents.

(v) Originals of all Government Bills of Lading will be surrendered to the origin carrier at the time of shipment.

(vi) The memorandum/consignee copy of Bill of Lading or Airbill will be mailed to Buyer's Traffic Management Department referenced elsewhere in this contract, or Buyer's authorized purchasing representative.

(B) Freight Terms

(i) "Prepay and Add" is not authorized.

(ii) Seller must ship "Collect" to Buyer on all F.O.B. Origin shipments.

(iii) Third Party/Direct Shipments must adhere to the instructions set forth herein and, if Buyer is responsible for the freight costs, must be shipped "Third Party Collect" to Buyer.

(C) Air Shipments

Air shipments weighing 500 pounds or more must be authorized by Buyer. Prior to making such shipments, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative for the applicable carrier account number.

(D) Specialized Shipments

Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative prior to shipping the following types of shipments:

(i) Classified Shipments

(ii) Electronics

(iii) Explosives

(iv) Over-Dimensional shipments

(v) Refrigeration shipments

(vi) Shipments exceeding 1000 pounds in gross weight

(vii) Shipments requiring special handling or equipment (i.e., air ride equipment, fragile items, heavy haul trailers, etc.)

(E) Insurance

Seller will not insure any shipment unless authorized by Buyer.

(F) Shipping Container Labels

(i) Seller will label each shipping container with the contract number.

(ii) Seller will label each container with the number that each container represents of the total number to be shipped (e.g., Box 1 of 2, Box 2 of 2).

(G) Weights

Weights listed herein and/or in the contract refer to the gross total combined weight of all shipping containers.

(H) Carrier Selection

Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer.

(I) Invoices

Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.

(J) Noncompliance

(i) If unable to comply with the instructions in this contract, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative.

(ii) Failure to comply with the shipping instructions in this contract will result in Seller being liable for loss or damage in transit. In addition, excess freight charges and a \$50 administrative processing fee will be debited to Seller.

(K) Inquiries or special instructions

Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative with inquiries or requests for special instructions.

31. QUALIFIED PRODUCTS LIST (QPL) ITEM SOURCES

(A) If Seller is a seller of QPL items and this contract requires QPL items, Seller certifies:

(i) By acceptance of this order, that it is a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List.

-OR-

(ii) In writing, that materials/parts being supplied pursuant to this Contract are, at the time of manufacture and shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Certification shall accompany each shipment. This certification must also include the manufacturer's name for each item shipped to Buyer.

(B) If this contract requires assemblies or end items which contain any Government Standard Part specified on the Qualified Products List (as required by the controlling Government Specification), Seller agrees that such Government Standard Parts will be obtained only from such qualified sources or from authorized dealers/distributors. Seller will obtain and keep on file written evidence that such qualified items were, at the time of manufacture or shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Seller will obtain and keep on file the names of such manufacturers.

32. OFFSET AND CO-PRODUCTION

(This Article applies only if the end-item procured hereunder is controlled by Buyer's Specification and/or Drawing).

(A) Seller will use its best efforts to cooperate with Buyer in the fulfillment of any offset program obligation that Buyer may have accepted as a condition of the sale of a product of Buyer to a foreign nation.

(B) Buyer reserves the right to all "offset" credits resulting from the co-production or other similar obligations entered into between Seller and foreign sources of any goods or services in support of the procurement hereunder. Seller may not procure or offer to procure any goods or services ordered hereunder from any foreign source without the prior written approval of Buyer. This reservation applies to not only the goods and services ordered hereunder but also to the procurement of additional quantities thereof by means of options or similar commitments obtained by Seller to fulfill anticipated requirements Buyer may have. Seller may not enter into such procurements from foreign sources to support Buyer's future requirements without Buyer's prior written approval.

(C) While Buyer's approval under paragraph (B) may not be unreasonably withheld, Seller may be required to complete and file all necessary documentation in order to effect the passing through of offset credits to Buyer as a condition precedent to such approval.

33. NEW ITEMS OF MANUFACTURE

In the event (i) there are any new features of design incorporated in any material, software, article, or machine made under this contract as a result of Seller's compliance with the drawings or specification of Buyer; (ii) a portion of such development cost is being charged by Seller directly or indirectly to Buyer; and (iii) the material, software, article, or machine to be made hereunder is not merely a slight modification of a material, software, article, or machine with respect to

which Seller already possesses patent rights or copyrights, then Seller grants to Buyer the right to reproduction of such material, software, article, or machine together with a royalty-free, non-exclusive, irrevocable license under any U. S. patent or copyright covering such new features. If this contract is issued pursuant to a Government prime contract or subcontract, and if Buyer is reimbursed through said Government prime contract or subcontract for all monies paid to Seller in connection with this contract, then, in that event, this Article shall be deemed deleted.

34. ADVANCE MANUFACTURE, ADVANCE SHIPMENTS, AND OVER SHIPMENTS

The goods covered by this contract will be delivered in accordance with the delivery schedule. Seller will not, without Buyer's prior written consent, manufacture in advance of the reasonable flow time required to accomplish delivery in accordance with such schedule, nor will Seller deliver any such supplies in advance of such schedule without Buyer's written consent. Buyer reserves the right to return, shipping charges collect, or to store at Seller's expense all such supplies received by Buyer substantially in advance of such schedule. No over shipments will be accepted except those resulting in good faith from conditions of loading, shipping, packing, or allowances in manufacturing processes, and in no case exceeding five percent of the quantity called for or the Forging Industry Association quantity tolerated.

35. EXPORT OF TECHNICAL DATA

(A) Seller represents and warrants that no technical data furnished to it by Buyer or developed by Seller directly from such data during performance of the work under this contract will be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the United States, without first complying with the licensing, approval, and all other requirements of the U.S. export control laws, regulations, and directives, including but not limited to the Arms Export Control Act (22 USC 2778), International Traffic in Arms Regulations (22 CFR, Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799), and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure.

(B) Seller will obtain the written consent of Buyer prior to submitting any request for authority to export any such technical data.

(C) Seller will indemnify and hold harmless Buyer from all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from failure of Seller to comply with this Article.

36. EXCUSABLE DELAYS

The clause set forth in FAR 52.249-14, Excusable Delays, in effect on the date of this contract, is incorporated by reference. "Contractor" shall mean Seller, and "Contracting Officer" and, in paragraph (c), "Government" shall mean Buyer.

37. REPRESENTATIONS AND CERTIFICATIONS

This Article includes representations and certifications that Buyer is required to obtain from Seller in order to comply with various provisions of its Government contracts. They have been stated in such a way as to allow Seller's acceptance of this contract to serve as representations and certifications that will present no bar to Buyer's award of this contract. If, upon receipt of a solicitation that precedes a contract that will incorporate these terms and conditions, Seller believes it is not prepared to make these representations and certifications, it will so notify Buyer as part of its response to the solicitation.

By the acceptance of this order, Seller makes the following representations and certifications:

(A) Certification of Nonsegregated Facilities

(i) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(ii) Seller certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Seller agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(iii) Seller further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will -

(a) Obtain identical certifications from proposed subcontractors before the award of contracts under which the subcontractor will be subject to the Equal Opportunity clause;

(b) Retain the certifications in the files; and

(c) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

Notice to Proposed Subcontractors of Requirement for Certifications of Nonsegregated Facilities.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(B) Previous Contracts and Compliance Reports

Seller represents that:

(i) It has participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114.

(ii) It has filed all Compliance Reports.

(iii) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained.

(C) Affirmative Action Compliance (applicable if Seller has 50 or more employees)

Seller represents that:

(i) If required to do so by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), it has developed and has on file a written Affirmative Action Compliance Program at each of its establishments, or

(ii) In the event such a program does not presently exist, and this contract is for \$50,000 or more, that it will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this contract.

(D) Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

Seller certifies that, to the best of its knowledge and belief, it is not presently debarred, suspended, proposed for debarment, or ineligible from entering into contracts with the Executive Branch of the Federal Government.

38. SINGLE PROCESS INITIATIVES

While Seller's contract is with Buyer, when reading this Article, Seller should keep in mind that Buyer is a wholly owned subsidiary of The Boeing Company and is a part of Boeing's Information, Space, and Defense Systems (ISDS).

(A) Seller is encouraged to pursue and implement Single Process Initiatives (SPI) throughout the life of this contract. Seller may be relieved of requirements in this contract when those requirements are inconsistent with Government-approved SPI processes at Seller's facility. This relief will be granted under the following conditions:

(i) Boeing's customer (U.S. Air Force, U.S. Navy, U.S. Army, or NASA) must have been a party to the SPI approval at Seller's facility.

(ii) Seller must describe in writing the requirements of this contract that are inconsistent with the SPI process and must commit that there will be no adverse impact to performance, cost, quality, or schedule due to the substitution of Seller's approved SPI process.

(iii) There must be no specific technical reason that prevents the use of Seller's approved SPI process on work under this contract.

(iv) Cost savings realized from Seller's implementation of the SPI process will be shared with The Boeing Company in a manner similar to that used for determining the Government's share of cost savings.

(v) Seller's SPI must be submitted to Buyer for review as early as possible, preferably concurrent with Seller's submittal to its Government customer.

(vi) Seller's submittal to Buyer must include the following if available:

(a) A copy of the concept paper/block change proposal that was submitted to Seller's Government customers.

(b) A list of the Boeing ISDS locations and programs affected by the SPI.

(c) A description of the equipment items affected.

(d) Specific change language (was/now) being requested.

(e) Seller's proposed consideration to Boeing for agreeing to the change.

(f) A copy of the signed block change from, or MOA with, the Government.

(g) Seller's regular Boeing point of contact.

(h) Seller's point of contact for SPI technical issues.

(i) Names of other prime contractors affected by the SPI.

(j) A list of Government agencies that have approved the SPI.

(B) Boeing will consider all Government-approved SPI processes meeting the above conditions as applicable to all existing and follow-on contracts with Seller.